

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVEN DARBY MCDONALD,

Plaintiff,

V.

M. AIJAZ KHURSHID, *et al.*,

Defendants.

Case No. C04-5736RJB

ORDER GRANTING
WITHDRAWAL AND ORDER
TO SHOW CAUSE

On review of the record, the court does hereby find and ORDER.

(1) On September 22, 2005, the court asked the Court Clerk to draw on the pro bono panel and forward to the court the name of an attorney who was willing to be appointed to represent Plaintiff in this matter. Ms. Stephanie Bloomfield, a very well qualified and respected attorney, stepped up to fill this role and was appointed on October 4, 2005.

(2) Now before the court are several motions and requests (Docs. 182, 183, 184, 188, 189, 191, 192, 195) filed by Mr. McDonald stating that he has fired Ms. Bloomfield and seeking her withdrawal from this matter. Plaintiff's first request was filed only approximately one month following Ms. Bloomfield's appearance, in which plaintiff complained of Ms. Bloomfield's lack of action taken on his behalf.

Based on Ms. Bloomfield's declaration filed in regard to this issue, the court finds Ms. Bloomfield was actively and appropriately pursuing her client's claims. She was in the process of obtaining the voluminous medical and legal records to develop her knowledge of the case and the history necessary to properly represent any client. The court notes that Mr. McDonald acknowledged that he was agitated and

1 upset at the time he “fired” Ms. Bloomfield and that he would be willing to accept her reappointment. *See*
 2 Doc. 188. Due to the breakdown in the relationship with her client, Ms. Bloomfield does not feel she
 3 should continue to represent Mr. McDonald. *See* Doc. 181.

4 Given the situation, the court finds it appropriate to allow Ms. Bloomfield to withdraw from
 5 representing Mr. McDonald in this matter. Accordingly the court **GRANTS** plaintiff’s motion to allow
 6 the withdrawal of his court appointed attorney. The court appreciates Ms. Bloomfield’s willingness to
 7 take on this difficult matter and her willingness to be assigned to future pro bono cases.

8 3. The court **DENIES** plaintiff’s further requests and motions for appointment of a different pro
 9 bono attorney. There is no reason to believe that, if the court requested another attorney from the pro
 10 bono panel to represent Mr. McDonald, the same amount of time (4 to 6 weeks) would be needed for the
 11 newly appointed attorney to gather the information necessary to conduct his or her own independent
 12 investigation of the alleged facts to properly represent Plaintiff in this matter. Consequently, there is no
 13 reason to believe that appointment of another counsel in this matter would not result in the same
 14 frustration and emotion from plaintiff and the same ultimate request from Mr. McDonald for substitution of
 15 counsel. This would only further delay litigation.

16 4. As noted in the court’s previous order appointing counsel, the Amended Complaint filed in this
 17 matter is deficient. It does not state with sufficient specificity what acts were allegedly done by any of the
 18 named defendants which allegedly harmed Plaintiff. The Amended Complaint fails to state any specific
 19 cause of action against any one of the four named defendants. Plaintiff attempts to incorporate the original
 20 Complaint, exhibits and documents filed along with the original complaint and a declaration filed in support
 21 of the Amended Complaint, but this is inadequate. An Amended Complaint must stand on its own.

22 **By not later than January 21, 2006, Plaintiff shall file an amended complaint, curing those
 23 deficiencies, or show cause why this matter should not be dismissed for failure to state a cognizable
 24 claim.**

25 The court will further note that in the Amended Complaint, Plaintiff names four defendants: (i) M.
 26 Ajaz Khurshid, a physician at Stafford Creek Corrections Center; (ii) Karen Saylor, a physician at McNeil
 27 Island Correctional Center; (iii) John Choe, a physician at McNeil Island Correctional Center; and (iv)
 28 Ronald Fleck, a physician at the Washington State Penitentiary. Plaintiff is no longer housed or in custody

1 at one of the facilities in which any of the named defendants is employed or otherwise provides services.
 2 This is significant due to plaintiff's continued requests to receive injunctive relief, for which he has not
 3 shown any immediate harm from any of the named defendants and lacks standing to present in this matter.
 4 Any Amended Complaint filed to cure the noted deficiencies above shall be limited to the time period in
 5 which plaintiff was previously in custody at Stafford Creek or McNeil Island, as this court arguably does
 6 not have jurisdiction over facilities and persons employed in facilities outside of the Southern portion of the
 7 Western District of Washington to entertain plaintiff's requests for injunctive relief.

8 5. On April 26, 1996, the President signed into law the Prison Litigation Reform Act, which affects
 9 in forma pauperis applications and civil complaints brought by prisoners seeking relief under § 1983. The
 10 in forma pauperis statute now states:

11 **(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil
 12 action or proceeding under this section if the prisoner has, on 3 or more prior
 13 occasions, while incarcerated or detained in any facility, brought an action or appeal
 14 in a court of the United States that was dismissed on the ground that it is frivolous,
 15 malicious, or fails to state a claim upon which relief may be granted, unless the
 16 prisoner is under imminent danger of serious physical injury.**

17 Prisoner Litigation Reform Act of 1995 § 804(d) (will be codified as amended at 28 U.S.C. § 1915).

18 Mr. McDonald has been granted leave to proceed *in forma pauperis* in this matter. In his proposed
 19 complaint filed along with his application to proceed *in forma pauperis*, Mr. McDonald informed the court
 20 that he had filed several previous lawsuits, but he only listed one previous case despite the instruction that
 21 he list all of the cases on separate attached sheets of paper if more space was needed to list them all. In
 22 searching the court's computer records, it appears Mr. McDonald was not as forthright as he could have
 23 been with respect to his previous case history. The court records for the Western District of Washington
 24 indicate plaintiff has filed at least 13 separate matters with the court since 1993. Significantly, this court
 25 has identified three cases that were dismissed because plaintiff either failed to state a proper claim or the
 26 claim was frivolous or malicious. See C96-0529R, McDonald v. Hiatt, et al.; C99-2074Z, McDonald v.
 27 Needy, et al.; and C01-1301P, McDonald v. Verge, et al.

28 In addition to the above, the court notes the continuing obnoxious and vexatious nature or tone
 29 contained in Mr. McDonald's instant pleadings. For instance, even though the court properly struck
 30 several motions filed by plaintiff due to procedural mistakes and repetition, which causes unnecessary delay
 31 and expense to all parties involved, Mr. McDonald continues to make repeated requests without following

1 appropriate procedure. To file his request to have his appointed attorney withdrawn from the matter, he
2 filed at least 8 motions or requests with the court between November 16, 2005, and December 9, 2005.
3 The court further notes that issues regarding plaintiff's mental competence to proceed pro se in cases and
4 whether or not he should be entitled to a guardian ad litem have been raised in the previous cases several
5 times to no avail, and Mr. McDonald has failed to disclose the previous resolution of those issues to this
6 court when he presented similar motions or requests.

7 In sum, **Plaintiff is required to show cause by not later than January 21, 2006**, why this matter
8 should not be summarily dismissed as required by the Prisoner Litigation Reform Act of 1995 § 804(d).

9 (6) The Clerk is directed to send plaintiff a copy of this Order.

10 DATED this 28th day of December, 2005.

11 /s/ J. Kelley Arnold
12 J. Kelley Arnold
13 United States Magistrate Judge